



# House of Representatives

General Assembly

**File No. 86**

February Session, 2014

House Bill No. 5257

*House of Representatives, March 25, 2014*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) (a) As used in this section  
2       and section 2 of this act:

3       (1) "Affected community" means the city or town in which a  
4       nonprofit hospital is located and the cities or towns whose inhabitants  
5       are regularly served by a nonprofit hospital;

6       (2) "Conversion" means any transfer by a person or persons of the  
7       assets or operation of a nonprofit hospital to a person or persons that is  
8       organized or operated for profit, that results in (A) a change in the  
9       ownership, control or possession of not less than twenty per cent of (i)  
10      the voting rights or interests in the nonprofit hospital, or (ii) the assets  
11      of the nonprofit hospital; (B) a person previously unaffiliated with the  
12      nonprofit hospital possessing not less than ten per cent of (i) the voting  
13      rights or interests in the nonprofit hospital, or (ii) the assets of the

14 nonprofit hospital; or (C) the removal, addition or substitution of a  
15 person holding an ownership or membership interest in the nonprofit  
16 hospital that results in a previously unaffiliated person gaining or  
17 acquiring a controlling interest or controlling vote in the nonprofit  
18 hospital;

19 (3) "Nonprofit hospital" has the same meaning as provided in  
20 section 19a-486 of the general statutes;

21 (4) "Person" means any individual, trust or estate, firm, partnership,  
22 corporation, limited liability company or other entity, including the  
23 state and any political subdivision thereof; and

24 (5) "Transfer" has the same meaning as provided in section 19a-486  
25 of the general statutes.

26 (b) Prior to undergoing a conversion, the nonprofit hospital and the  
27 person or persons seeking the assets or operation or a change in  
28 control of operations of the nonprofit hospital shall enter into a written  
29 memorandum of understanding to preserve community benefits in the  
30 affected community. The memorandum of understanding shall require  
31 the person or persons seeking the assets or operation or a change in  
32 control of operations of the nonprofit hospital to: (1) Maintain the  
33 current rates of pay and current benefits of all employees employed at  
34 the nonprofit hospital at the time of conversion; (2) recognize any labor  
35 organizations representing employees employed at the nonprofit  
36 hospital at the time of conversion; (3) honor any collective bargaining  
37 agreements entered into between a labor organization and the  
38 nonprofit hospital; (4) maintain staffing levels at the time of conversion  
39 for not less than three years following the date the Attorney General  
40 and Commissioner of Public Health have approved the conversion  
41 pursuant to section 19a-486b of the general statutes; and (5) follow best  
42 practices for staffing levels to assure patient care and safety.

43 (c) Prior to undergoing a conversion, the city or town in which the  
44 nonprofit hospital is located shall hold not less than three public  
45 hearings. The public hearings shall be open to all members of the

46 public in the affected community and shall include, but not be limited  
 47 to: (1) A discussion of the conversion and the person or persons  
 48 seeking the assets or operation or a change in control of operations of  
 49 the nonprofit hospital; (2) a summary of the potential impact of the  
 50 proposed conversion on employment at the nonprofit hospital; and (3)  
 51 an opportunity to question representatives of the nonprofit hospital  
 52 and the person or persons seeking the assets or operation or a change  
 53 in control of operations of the nonprofit hospital about any relevant  
 54 concerns. Not less than fourteen days prior to each hearing, notice of  
 55 the time and place of the hearing shall be publicized in one or more  
 56 newspapers of general circulation in the affected community. Each  
 57 public hearing shall take place at least sixty days before a certificate of  
 58 need application is filed with the Department of Public Health  
 59 pursuant to section 19a-486a of the general statutes.

60 Sec. 2. (NEW) (*Effective from passage*) Not later than thirty days after  
 61 undergoing a conversion, the person or persons having acquired  
 62 possession of the assets or operation of the former nonprofit hospital  
 63 shall submit a five-year strategic plan to the Department of Public  
 64 Health and the Labor Department detailing how employment may be  
 65 affected by decisions to grow or reduce health care services at the  
 66 hospital.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

**LAB**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### ***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:***

<b>Municipalities</b>	<b>Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Various Municipalities	STATE MANDATE - Cost	Less than \$5,000	Less than \$5,000

### ***Explanation***

The bill requires municipalities effected by the conversion of a non-profit hospital to for-profit to: 1) hold at least three public hearings regarding the conversion and; 2) to post notice of each public hearing in at least one newspaper.

There is a minimal cost, estimated to be less than \$5,000, to hold three public hearings, assuming they are held separately from hearings that would have occurred anyway. This cost could be incurred across multiple fiscal years, based on the timing of the public hearings, and it would vary based on how a town conducts its public hearings. Towns incur the cost of publishing legal notices for the hearings, and may also incur costs associated with transcription services, and overtime for maintenance, clerical, or public safety workers.

The bill makes other changes to the process of converting from a non-profit to for-profit hospital. These changes have no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****HB 5257*****AN ACT CONCERNING HOSPITAL EMPLOYEES AND HOSPITAL CONVERSIONS.*****SUMMARY:**

This bill creates additional requirements that a nonprofit hospital and an entity seeking to convert it to a for-profit hospital (“the purchaser”) must meet before and after undergoing the conversion process required by law. Prior to the conversion, it requires the hospital and purchaser to enter into a memorandum of understanding (MOU) that, among other things, requires the purchaser to recognize the hospital’s unions and honor its collective bargaining agreements (see COMMENT). It also requires the hospital’s host municipality to hold three public hearings for the hospital and purchaser at least 60 days before they start the conversion.

Within 30 days after completing the conversion, the bill requires the purchaser to submit to the departments of Labor and Public Health a five-year strategic plan detailing how its decisions to change the hospital’s health care services could affect employment.

Under the bill, a nonprofit hospital converts to a for-profit hospital when the hospital’s transfer of its assets or operation to a for-profit entity results in:

1. a change in the ownership, control, or possession of at least 20% of the (a) voting rights in the hospital or (b) hospital’s interests or assets (The bill does not define “voting rights in the hospital,” but presumably it refers to votes that can influence control over the hospital.);
2. a previously unaffiliated entity controlling at least 10% of the (a)

voting rights in the hospital or (b) hospital's interests or assets;  
or

3. a change in the hospital's ownership or membership interest that gives a previously unaffiliated entity a controlling interest or vote in the hospital.

EFFECTIVE DATE: Upon passage

### **MEMORANDUM OF UNDERSTANDING**

The bill requires a nonprofit hospital and purchaser, before the conversion process, to enter into a written MOU to preserve community benefits in the hospital's host municipality and any other municipality regularly served by the hospital. The MOU must require the purchaser to:

1. maintain existing pay rates and benefits for employees employed at the hospital when it converts,
2. recognize any unions representing the hospital's employees when it converts,
3. honor the hospital's existing collective bargaining agreements,
4. maintain the hospital's existing staffing levels for at least three years after the conversion process required by law ends, and
5. follow best practices for staffing levels to assure patient care and safety.

It is unclear how such an MOU would be enforced once the conversion is complete.

### **PUBLIC HEARINGS**

The bill requires the hospital's host municipality to hold at least three public hearings no later than 60 days before the hospital and purchaser file a certificate of need application with the Department of Public Health (see "BACKGROUND"). At least 14 days before each

hearing, notice must be published (presumably, by the municipality) in a newspaper of general circulation in the hospital's host municipality and any other municipality whose inhabitants the hospital regularly serves. The hearing must include (1) a discussion of the conversion and the purchaser, (2) a summary of the proposed conversion's potential impact on employment at the hospital, and (3) an opportunity to question the purchaser's and hospital's representatives about any relevant concerns.

## **BACKGROUND**

### ***Conversion Process Required by Law***

The law requires the public health commissioner or her designee and the attorney general (AG) to review and approve a nonprofit hospital's conversion to a for-profit entity (CGS §§ 19a-486 to 486h). Filing a certificate of need application with the Department of Public Health (DPH) is one of the initial steps the parties must take in the process. Before approving the conversion, DPH and the AG must hold a hearing and consider numerous factors, including whether (1) the hospital exercised due diligence in deciding to pursue a conversion, (2) the hospital will receive fair market value for its assets, and (3) the affected community is assured of continued access to affordable health care.

## **COMMENT**

### ***Federal Preemption***

Under the Supremacy Clause of the U.S. Constitution, state law is preempted when Congress explicitly states its intent to regulate in the area (Art.VI). The National Labor Relations Act (29 USC §§151-169) and the National Labor Relations Board, which was created by the act, have jurisdiction over requirement for recognizing private-sector unions and determining if a collective bargaining agreement transfers to a successor employer. Because of this, the bill's provisions requiring the purchaser to recognize the hospital's unions and honor its collective bargaining agreements may be vulnerable to a legal challenge asserting the law is preempted.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 8      Nay 4      (03/11/2014)